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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/858,458	05/16/2001	Jay S. Walker	01-015	4161

7590 01/26/2005
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EXAMINER

NELSON, FREDA ANN

ART UNIT	PAPER NUMBER
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3629

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/858,458

Applicant(s)

WALKER ET AL.

Examiner

Freda Nelson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is in response to a letter for a patent filed May 16, 2001 in which claims 1–25 were presented for examination. Claims 1-25 are pending.

Information Disclosure Statement

1. The information disclosure statements (IDS) submitted on 05/16/01, 06/13/01, 08/12/02, 11/04/02, and 04/17/03 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner. Copies of PTO-1449s are attached hereto.

Claim Objections

2. Claim 9 is objected to because of the following informalities:

Line 1, “clam” should be “claim”.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 10-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

4. In claim 10, line 2, "determining a status of at least one characteristic".

5. In claim 10, line 12; claim 12, line 8, respectively, "causing the food product to be offered in exchange for the round-up amount".

6. In claim 13, line 8 and claim 15, line 10, respectively, "causing and offer".

7. In claim 14, line 2, "causing the food component to be made into the food component".

Claim Rejections - 35 USC § 101

8. Claims 3-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

(1) whether the invention is within the technological arts; an,

(2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as

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opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 3-15 only recite an abstract idea. The recited steps of determining a time until expiration of a food product; setting a price range of the food product based on the time until expiration; and storing an indication that the food product may be offered in exchange for a round-up amount if the round-up amount is within the price range does not apply, involve, use, or advance the technological arts (i.e. interaction in the steps with the computer/computer network or other equivalent means) since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper. These steps only constitute an abstract idea.

Although the recited process produces a useful, concrete, and tangible result, since the claimed invention, as a whole, is not within the technological arts as explained above, claims 3-15 are deemed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 102

9. Claims 1-9, 12-17, 19-22, and 24-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al. (Patent Number 6,298,331).

10. The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome

either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

In claim 1, Walker et al. disclose that the inventory database 92 includes entries, 110, 112, 114, and 116, each defining a food product. Walker et al. further disclose that at each entry includes (i) an age 330 defining an age or age range; (ii) a minimum price 332 of the food product having that age; and (iii) a maximum price 334 of the food product having that age. Walker et al. still further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col. 13, lines 42-45).

In claim 2, Walker et al. disclose that the aged inventory database 94 may be considered as storing indications of food products that correspond to one or more predetermined age categories (e.g. all age categories except the first age category) col. 11, lines 42-45)). Walker et al. disclose that each record defines price adjustments for a food product at different ages of that food product (col. 11, lines 5-7). Walker et al. further disclose that at each entry includes (i) an age 330 defining an age or age range; (ii) a minimum price 332 of the food product having that age; and (iii) a maximum price 334 of the food product having that age (col. 11, lines 42-45)). Walker et al. still further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col. 13, lines 42-45).

In claim 3, Walker et al. disclose that the time until expiration of each food

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product is first determined (col. 8, lines 12-13). Walker et al. further disclose that at each entry includes (i) an age 330 defining an age or age range; (ii) a minimum price 332 of the food product having that age; and (iii) a maximum price 334 of the food product having that age col. 11, lines 42-45). Walker et al. further disclose that the store server 18 receives from the automated kitchen apparatus 20 an indication of aged food products that should be sold wherein the store server 18 in turn communicates with the POS terminals 12, 14 and 16, where customers may be sold such aged food products (col. 4, lines 6-13).

In claim 4, Walker et al. disclose that the aged food product has a price that is in a range from a minimum price to a maximum price (col. 12, lines 8-10).

In claim 5, Walker et al. disclose that during a customer transaction, the POS terminal generates a purchase price and a rounded price (col. 13, lines 7-8). Walker et al. disclose that the round-up amount is the difference between the purchase price and the rounded price (col.13, lines 10-11). Walker et al. further disclose that during a customer transaction, the POS terminal generates a purchase price and a rounded price (steps 382 and 384) and therefrom calculates a round-up amount (step 386) col. 13, lines 7-11)). Walker et al. further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col. 13, lines 42-45). Walker et al. further disclose that otherwise, the POS terminal determines whether any of these aged food products have a minimum price that is less than or equal to the round-up amount (step 392) and if any do, at least one is selected and offered to the customer

(col. 13, lines 20-28).

In claims 6-9, Walker et al. discloses that there may be a first age category that includes food products greater than fifteen minutes old, and a second age category that includes food products less than fifteen minutes old. Food products corresponding to the first age category may be deemed excessively aged, and as such should be exchanged for a customer's change due (col. 13, lines 14-19). Walker et al. further disclose that if there are one or more food products indicated by the aged inventory database 94, then a food product is selected (step 346). If more than one food product is indicated, the food product may be, for example, selected at random or selected based on what the customer has ordered (col. 11, lines 56-65). Walker et al. does not disclose receiving at least one characteristic of the purchase wherein the characteristic of the purchase comprises: receiving an indication of at least one of (i) a number of customers associated with the purchase, (ii) at least one product included in the purchase, (iii) an age of a customer associated with the purchase, (iv) a weight of a customer associated with the purchase, and (v) a gender of a customer associated with the purchase, however, it is old and well known in the food art. It would have been obvious to one of ordinary skill in the art at the time the invention was made that it is old and well-known to enter the number of customers associated with a purchase, as well as, entering the ages of customers associated with a purchase to ensure proper prices and/or discounts are applied to the purchase. For instance, a senior citizen discount may be given to a customer, as well as, a discount for children under the age of 12 years old. It would have been obvious to one of ordinary skill in the art at the time

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the invention was made to implement the invention of Walker et al. to include the feature of receiving at least one characteristic of the purchase in order to offer food products that will satisfy customers of all ages.

In claim 12, Walker et al. disclose that the time until expiration of each food product is first determined (col. 8, lines 12-13). Walker et al. disclose that when a food component is near or at expiration, it is assembled into a food product if possible (col. 9, lines 30-31). Walker et al. disclose that based on the time until expiration, a minimum price of each food product is set (col. 10, lines 19-20). Walker et al. further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col. 13, lines 42-45).). Walker et al. still further disclose that the round-up amount is the difference between the purchase price and the rounded price (col.13, lines 10-11).

In claim 13, Walker et al. disclose that the time until expiration of each food product is first determined (col. 8, lines 12-13). Walker et al. disclose that the food product assembled input 218 may comprise one or more input buttons, each corresponding to a food component (col. 9, lines 34-36). Walker et al. further disclose that each entry includes (i) an age 330 defining an age or age range; (ii) a minimum price 332 of the food product having that age; and (iii) a maximum price 334 of the food product having that age (col. 11, lines 42-45)). Walker et al. further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col.

13, lines 42-45). Walker et al. still further disclose that the round-up amount is the difference between the purchase price and the rounded price (col.13, lines 10-11).

In claim 14, Walker et al. disclose that when a food component is near or at expiration, it is assembled into a food product if possible (col. 9, lines 30-31).

In claim 15, Walker et al. disclose that the time until expiration of each food product is first determined (col. 8, lines 12-13). Walker et al. disclose that if a cook or other restaurant personnel is able to assemble the food component into a food product, he so indicates using a "food product assembled" input 218 (FIG. 9), the food product is placed in the warming bins 160, and the time until expiration of the food product may be determined (col. 10, lines 6-11). Walker et al. further disclose that each entry includes (i) an age 330 defining an age or age range; (ii) a minimum price 332 of the food product having that age; and (iii) a maximum price 334 of the food product having that age (col. 11, lines 42-45)). Walker et al still further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col. 13, lines 42-45). Walker et al. still further disclose that the round-up amount is the difference between the purchase price and the rounded price (col.13, lines 10-11).

In claim 16, Walker et al. disclose the POS terminal 30 comprises a processor 32 (col. 4, lines 17-18). Walker et al. disclose that the storage device 34 stores a program 42 for controlling the processor 32 (col. 4, lines 43-45). Walker et al. disclose that the kitchen apparatus determines the time until expiration by receiving a start signal indicating that a food product is available to sell (col. 2, lines 35-38). Walker et al.

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further discloses that the price of the selected food product is determined (step 348) wherein the price adjustment database 96 (FIG. 4) is used to determine the price of the food product based on the age of that food product (col. 11, lines 66 through col. 12, lines 3). Walker et al. still further disclose that the aged food product has a price that is in a range from a minimum price to a maximum price (col. 12, lines 5-10). Walker et al. disclose that the store server 18 receives from the automated kitchen apparatus 20 an indication of aged food products that should be sold wherein the store server 18 in turn communicates with the POS terminals 12, 14 and 16, where customers may be sold such aged food products (col. 4, lines 6-13) .

In claim 17, Walker et al. disclose the POS terminal 30 comprises a processor 32 (col. 4, lines 17-18). Walker et al. disclose that the storage device 34 stores a program 42 for controlling the processor 32 (col. 4, lines 43-45). Walker et al. disclose that during a customer transaction, the POS terminal generates a purchase price and a rounded price (col. 13, lines 7-9). Walker et al. further disclose that the round-up amount is the difference between the purchase price and the rounded price (col.13, lines 10-11). Walker et al. further disclose that once the (reduced) price of the selected food product has been determined, an appropriate offer is provided to the customer (step 350) col. 12, lines 11-13)). Walker et al still further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col. 13, lines 42-45).

In claim 19, Walker et al. disclose the POS terminal 30 comprises a processor 32 (col. 4, lines 17-18). Walker et al. disclose that the storage device 34 stores a program

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42 for controlling the processor 32 (col. 4, lines 43-45). Walker et al. disclose that the time until expiration of each food product is first determined (col. 8, lines 12-13). Walker et al. disclose that when a food component is near or at expiration, it is assembled into a food product if possible (col. 9, lines 30-31). Walker et al. disclose that based on the time until expiration, a minimum price of each food product is set (col. 10, lines 19-20). Walker et al. further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col. 13, lines 42-45). Walker et al. still further disclose that the round-up amount is the difference between the purchase price and the rounded price (col. 13, lines 10-11).

In claim 20, Walker et al. disclose the POS terminal 30 comprises a processor 32 (col. 4, lines 17-18). Walker et al. disclose that the storage device 34 stores a program 42 for controlling the processor 32 (col. 4, lines 43-45). Walker et al. disclose that the kitchen apparatus determines the time until expiration by receiving a start signal indicating that a food product is available to sell (col. 2, lines 35-38). Walker et al. disclose that when a food component is near or at expiration, it is assembled into a food product if possible (col. 9, lines 30-31). Walker et al. disclose that each record defines price adjustments for a food product at different ages of that food product (col. 11, lines 5-7). Walker et al. further disclose that at each entry includes (i) an age 330 defining an age or age range; (ii) a minimum price 332 of the food product having that age; and (iii) a maximum price 334 of the food product having that age (col. 11, lines 42-45)). Walker et al. still further disclose that the selected food product is exchanged for the

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round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col. 13, lines 42-45). Walker et al still further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col. 13, lines 42-45). Walker et al. still further disclose that the round-up amount is the difference between the purchase price and the rounded price (col.13, lines 10-11).

In claim 21, Walker et al. disclose that the storage device 34 stores a program 42 for controlling the processor 32 wherein the processor 32 performs instructions of the program 42, and thereby operates in accordance with the present invention, and particularly in accordance with the methods described in detail (col. 4, lines 47).

Walker et al further disclose that the program 42 furthermore includes program elements that may be necessary, such as an operating system and "device drivers" for allowing the processor 32 to interface with computer peripheral devices, such as the input device 36, the printer 38 and the display device 40 (col. 4, lines 47-54). Walker et al. disclose that the kitchen apparatus determines the time until expiration by receiving a start signal indicating that a food product is available to sell (col. 2, lines 35-38). Walker et al. further disclose that that the aged food product has a price that is in a range from a minimum price to a maximum price (col. 12, lines 8-10). Walker et al. still further disclose that the store server 18 receives from the automated kitchen apparatus 20 an indication of aged food products that should be sold wherein the store server 18 in turn communicates with the POS terminals 12, 14 and 16, where customers may be sold such aged food products (col. 4, lines 6-13).

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In claim 22, Walker et al. disclose that the storage device 34 stores a program 42 for controlling the processor 32 wherein the processor 32 performs instructions of the program 42, and thereby operates in accordance with the present invention, and particularly in accordance with the methods described in detail (col. 4, lines 47). Walker et al. disclose that during a customer transaction, the POS terminal generates a purchase price and a rounded price (col. 13, lines 7-8). Walker et al. disclose that the round-up amount is the difference between the purchase price and the rounded price (col.13, lines 10-11). Walker et al. further disclose that during a customer transaction, the POS terminal generates a purchase price and a rounded price (steps 382 and 384) and therefrom calculates a round-up amount (step 386) col. 13, lines 7-11)). Walker et al. further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col. 13, lines 42-45). Walker et al. further disclose that otherwise, the POS terminal determines whether any of these aged food products have a minimum price that is less than or equal to the round-up amount (step 392) and if any do, at least one is selected and offered to the customer (col. 13, lines 20-28).

In claim 24, Walker et al. disclose that the storage device 34 stores a program 42 for controlling the processor 32 wherein the processor 32 performs instructions of the program 42, and thereby operates in accordance with the present invention, and particularly in accordance with the methods described in detail (col. 4, lines 47). Walker et al. disclose that when a food component is near or at expiration, it

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is assembled into a food product if possible (col. 9, lines 30-31). Walker et al. disclose that based on the time until expiration, a minimum price of each food product is set (col. 10, lines 19-20). Walker et al. further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col. 13, lines 42-45). Walker et al. further disclose that otherwise, the POS terminal determines whether any of these aged food products have a minimum price that is less than or equal to the round-up amount (step 392) and if any do, at least one is selected and offered to the customer (col. 13, lines 20-28). Walker et al. still further disclose that the round-up amount is the difference between the purchase price and the rounded price (col. 13, lines 10-11).

In claim 25, Walker et al. disclose that the storage device 34 stores a program 42 for controlling the processor 32 wherein the processor 32 performs instructions of the program 42, and thereby operates in accordance with the present invention, and particularly in accordance with the methods described in detail (col. 4, lines 47). Walker et al. disclose that when a food component is near or at expiration, it is assembled into a food product if possible (col. 9, lines 30-31). Walker et al. further disclose that each entry includes (i) an age 330 defining an age or age range; (ii) a minimum price 332 of the food product having that age; and (iii) a maximum price 334 of the food product having that age (col. 11, lines 42-45)). Walker et al. further disclose that otherwise, the POS terminal determines whether any of these aged food products have a minimum price that is less than or equal to the round-up amount (step 392) and if any do, at least one is selected and offered to the customer (col. 13, lines 20-28).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 10-11, 18, and 23 are rejected under 35 U.S.C. 103(a) as being obvious over Walker et al. (Patent Number 6,298,331).

In claims 10-11, Walker et al. disclose that food products that are excessively aged become "perished" (e.g. stale or soggy) col. 1, lines 35-40). Walker et al. disclose that during a customer transaction, the POS terminal generates a purchase price and a rounded price (col. 13, lines 7-8). Walker et al. disclose that the round-up amount is the difference between the purchase price and the rounded price (col.13, lines 10-11).

Walker et al. further disclose that during a customer transaction, the POS terminal generates a purchase price and a rounded price (steps 382 and 384) and therefrom calculates a round-up amount (step 386) col. 13, lines 7-11)). Walker et al. further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col. 13, lines 42-45). Walker et al. further disclose that otherwise, the POS terminal determines whether any of these aged food products have a minimum price that is less than or equal to the round-up amount (step 392) and if any do, at least one is selected and offered to the customer (col. 13, lines 20-28). Walker et al. does not

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disclose setting a price range of the food product based on the status, wherein the price range defines a minimum price and a maximum price. It would have been obvious to one of ordinary skill in the art at the time the invention was made that it is old and well known to set price ranges (discounts, markdowns) for stale, soggy, or day-old food products. Bakeries oftentimes markdown day old, stale bread. Grocery stores often have a particular rack or shelf for overly ripened fruit (soggy bananas), old (stale) baked goods, and damaged goods (bent cans) where the price is discounted. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to set a price range for food products that are stale or soggy in order to recover some monies by not throwing out all old food products.

In claim 18, Walker et al. disclose that the POS terminal 30 comprises a processor 32 (col. 4, lines 17-18). Walker et al. disclose that the storage device 34 stores a program 42 for controlling the processor 32 (col. 4, lines 43-45). Walker et al. disclose that food products that are excessively aged become "perished" (e.g. stale or soggy) col. 1, lines 35-40). Walker et al. disclose that during a customer transaction, the POS terminal generates a purchase price and a rounded price (col. 13, lines 7-8). Walker et al. disclose that the round-up amount is the difference between the purchase price and the rounded price (col.13, lines 10-11). Walker et al. further disclose that during a customer transaction, the POS terminal generates a purchase price and a rounded price (steps 382 and 384) and therefrom calculates a round-up amount (step 386) col. 13, lines 7-11)). Walker et al. further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price

for total purchase including the aged food product (col. 13, lines 42-45). Walker et al. further disclose that otherwise, the POS terminal determines whether any of these aged food products have a minimum price that is less than or equal to the round-up amount (step 392) and if any do, at least one is selected and offered to the customer (col. 13, lines 20-28). Walker et al. does not disclose setting a price range of the food product based on the status, wherein the price range defines a minimum price and a maximum price. It would have been obvious to one of ordinary skill in the art at the time the invention was made that it is old and well known to set price ranges (discounts, markdowns) for stale, soggy , or day-old food products. Bakeries oftentimes markdown day-old (stale) bread. Grocery stores often have a particular rack or shelf for overly ripened fruit (soggy bananas), day old, stale baked goods, and damaged goods (bent cans) where the price is discounted. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to set a price range for food products that are stale or soggy in order to recover some monies by not throwing out all old food products.

In claim 23, Walker et al. disclose that the storage device 34 stores a program 42 for controlling the processor 32 wherein the processor 32 performs instructions of the program 42, and thereby operates in accordance with the present invention, and particularly in accordance with the methods described in detail (col. 4, lines 47). Walker et al. further disclose that food products that are excessively aged become “perished” (e.g. stale or soggy) col. 1, lines 35-40). Walker et al. disclose that during a customer transaction, the POS terminal generates a purchase price and a rounded

price (col. 13, lines 7-8). Walker et al. disclose that the round-up amount is the difference between the purchase price and the rounded price (col.13, lines 10-11). Walker et al. further disclose that during a customer transaction, the POS terminal generates a purchase price and a rounded price (steps 382 and 384) and therefrom calculates a round-up amount (step 386) col. 13, lines 7-11)). Walker et al. further disclose that the selected food product is exchanged for the round-up amount (step 402), so the customer pays the rounded price for total purchase including the aged food product (col. 13, lines 42-45). Walker et al. further disclose that otherwise, the POS terminal determines whether any of these aged food products have a minimum price that is less than or equal to the round-up amount (step 392) and if any do, at least one is selected and offered to the customer (col. 13, lines 20-28). Walker et al. does not disclose setting a price range of the food product based on the status, wherein the price range defines a minimum price and a maximum price. It would have been obvious to one of ordinary skill in the art at the time the invention was made that it is old and well known to set price ranges (discounts, markdowns) for stale, soggy , or day-old food products. Bakeries oftentimes markdown day-old (stale) bread. Grocery stores often have a particular rack or shelf for overly ripened fruit (soggy bananas), day old, stale baked goods, and damaged goods (bent cans) where the price is discounted. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to set a price range for food products that are stale or soggy in order to recover some monies by not throwing out all old food products.

Conclusion

12. The examiner has cited prior art of interest, for example:

1) Dietrich et al. (Patent Number 5, 630,070), which disclose optimization of manufacturing resource planning.

2) Hall (Patent Number 6,131,399), which discloses a refrigerated vending machine.

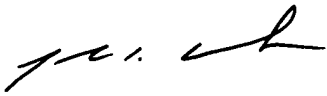
3) Round 'n' round they go, discloses using stale bread for making another food product which is an upsell.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda Nelson whose telephone number is (703) 305-0261. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Freda Nelson
Examiner
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